

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

\* Case No. 20-CR-0052 (EK)

\*

\* Brooklyn, New York  
\* April 8, 2022

\*

v.

\*

ORLANDO LOPEZ,

\*

\*

Defendant.

\*

\*

\* \* \* \* \*

TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING  
BEFORE THE HONORABLE EDWARD R. KOMITTEE  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:

TANYA HAJJAR, ESQ.  
Asst. United States Attorney  
United States Attorney's Office  
271 Cadman Plaza  
Brooklyn, NY 11201

For the Defendant:

MICHELLE A. GELERNTE, ESQ.  
Federal Defenders of New York  
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Proceedings recorded by electronic sound recording,  
transcript produced by transcription service.

1 (Proceedings commenced at 2:37 p.m.)

2 THE CLERK: Criminal cause for sentencing, the  
3 United States of America versus Orlando Lopez, docket number  
4 20CR52. Would you all please state your appearances for the  
5 record, starting with the government?

6 MS. HAJJAR: Good afternoon, Your Honor. Tonya  
7 Hajjar for the government. I'm jointed by Special Agent  
8 Aaron Steeva (ph) of the FBI and Jennifer Fisher of the  
9 United States Probation Department.

10 MS. GELERTN: Good afternoon, Your Honor.

11 THE COURT: Good afternoon. You can all stay  
12 seated while speaking. The important thing is that we're  
13 close enough to the microphones here for the sound recording,  
14 but good afternoon.

15 MS. GELERTN: Good afternoon, Your Honor. Federal  
16 Defenders by Michelle Gelernt -- G-E-L-E-R-N-T, along with  
17 Elba Torres Perez of the Federal Defenders, a mitigation  
18 specialist and seated also at counsel table with Mr. Lopez.

19 THE COURT: Good afternoon.

20 Okay. So we are --

21 THE CLERK: I'm sorry, Judge, we're joined by in-  
22 house Spanish interpreter Mario Michelena, previously sworn.

23 THE INTERPRETER: Good afternoon, Judge.

24 THE COURT: Good afternoon. All right. We are  
25 here for sentencing in this case as you all know. We are, as

1       Ms. Guy just noted, proceeding with the assistance of an  
2       interpreter.

3                   Mr. Lopez, it's important that you understand  
4       everything that is said here today, and if you need anything  
5       repeated or re-translated, please don't hesitate to speak up  
6       at any point and let us know that you missed something and we  
7       will make sure to repeat whatever is needed.

8                   THE DEFENDANT: Thank you, Judge.

9                   THE COURT: Okay. So Mr. Lopez pleaded guilty  
10      before me in this case to ten counts in the indictment. And  
11      let me invite the government to speak up if I get anything  
12      wrong here.

13                  This is a relatively complicated set of counts and  
14      guidelines calculations and statutory provisions and the  
15      like, and so as always, I invite feedback.

16                  The counts of Mr. Lopez's conviction are counts 2,  
17      4, 5, 6, 7, 8, 9, 10, 11, and 12. That is all of the counts  
18      in the indictment except for counts 1 and 3, correct?

19                  MS. HAJJAR: That's correct, Your Honor.

20                  THE COURT: Okay. And just for the sake of the  
21      clarity of the audio recording, I'm going to remove my mask.  
22      I'm up here behind the plexiglass and fully vaccinated. If  
23      anybody else wants to do the same, let me know and we'll talk  
24      about where you're seated and who you're seated next to and  
25      whether that's appropriate.

1                   Let me remark as we begin that it was important to  
2                   me and to the parties at the guilty plea proceeding to make  
3                   sure that the record was clear that when we talked about the  
4                   victims in this case by reference to their pseudonyms, that  
5                   we knew that we were all on the same page as to which victim  
6                   we were talking about in connection with which count.

7                   That is, of course, important again today and so at  
8                   my request the government has provided a chart that sets  
9                   forth in a series of columns the pseudonym by which each  
10                  victim is referred to in the indictment and other operative  
11                  documents, the true name of that victim, their date of birth  
12                  to the extent it's known, their age at the time that they  
13                  were victimized by the relevant crime of conviction, the  
14                  number of images of them recovered in the forensic analysis  
15                  here, and the number of videos to the extent we're talking  
16                  about video evidence.

17                  And for obvious reasons relating to the  
18                  confidentiality of the victims identities, I'm going to ask  
19                  the defense to return their copy of this document after  
20                  today's proceeding to the government for shredding.

21                  I know the defense already knows the identities of  
22                  these victims, I just don't want these pieces of paper  
23                  floating around, but I will mark for identification, my copy  
24                  of this chart as Court's Exhibit 1.

25                  MS. GELERTN: Your Honor, just regarding, that,

1 I've had conversations with government counsel and as the  
2 court is aware, there is a state case unrelated charges and  
3 I've sought to be able to provide this chart to state court  
4 counsel upon state court counsel's execution of the  
5 protective order that exists in this case. And government  
6 counsel indicated that that was acceptable.

7 I think it's important that the counsel in the  
8 state case as well as the judge in the state case understand  
9 exactly what conduct Mr. Lopez was convicted of here since  
10 there is overlapping conduct and overlapping victims in the  
11 state matter.

12 THE COURT: Yeah, I see the interest obviously in  
13 the state court for double jeopardy or other purposes  
14 understanding what conduct Mr. Lopez was convicted of in  
15 connection with what counts in this case.

16 I had not considered wider distribution than just  
17 those of us gathered here today, and so I think my position  
18 now is that it's fine with me if it's fine with the  
19 government. But if you want to be heard further on that, let  
20 me know.

21 MS. HAJJAR: Yes, Your Honor.

22 I just indicated to Ms. Gelernt that I would prefer  
23 if defense counsel in the state court proceeding assignee to  
24 the protective order Your Honor has entered. There is room  
25 for the option should defense counsel wish to share

1 information produced pursuant to the protective order.

2 So we'd just ask defense counsel to have state  
3 defense counsel sign on formally so that he is subject to the  
4 strictures of the protective order in this case.

5 THE COURT: Right. And presumably a copy of his  
6 signature page for the agreement transmitted to the  
7 government before the --

8 MS. HAJJAR: Disclosure.

9 THE COURT: -- disclosure occurs.

10 MS. HAJJAR: Yes, Your Honor.

11 THE COURT: Okay. I think we're all on the same  
12 page there.

13 Okay. So Mr. Lopez, let me before we formally  
14 begin here, just explain the process for today's proceeding.

15 First, I will say a word about the crimes of  
16 conviction, what counts relate to what statutes.

17 Second, I want to list on the record every  
18 submission that I have received and considered in preparation  
19 for today.

20 The purpose of that is to make sure that I have  
21 received everything the parties think I should have and that  
22 we're all working off the same information.

23 Next, we will discuss the pre-sentence report put  
24 together by the Probation Department as well as the addendum  
25 to that report and I know that there have been objections

1           along the way from the defense. We'll talk about those as  
2           well. And when I say the pre-sentence report in the context,  
3           I'm talking about the narrative recitations of the pre-  
4           sentence report.

5           We will also go over the guidelines calculation in  
6           the PSR. I think you know from your guilty plea hearing,  
7           that the United States Sentencing Guidelines are now  
8           advisory, meaning that I am not obligated to sentence within  
9           the guidelines range.

10           Nevertheless, it is still my obligation to  
11           determine what the guidelines range is and to consider the  
12           guidelines before imposing sentence, as well as any  
13           departures from the guidelines that might apply.

14           After that, after we all have agreement on what the  
15           guidelines range is for the offenses in this case, I will  
16           give the attorneys an opportunity to make any arguments they  
17           wish to make and following that, Mr. Lopez, you will have the  
18           right, but not the obligation, to make a statement to the  
19           court if you wish before I impose a sentence.

20           Once all of that has happened, I will most likely  
21           take a ten minute break to collect my thoughts and then we  
22           reconvene, I will review what we call the section 3553(a)  
23           factors.

24           Those are the factors that congress in federal  
25           sentencing law has required me to consider in order to

1           determine the appropriate sentence in this case. They  
2           include things like the personal history of the defendant,  
3           the offense conduct at issue and other factors that we will  
4           discuss.

5           After reviewing those factors, I will impose  
6           sentence. Mr. Lopez, do you understand the process I've laid  
7           out here?

8           THE DEFENDANT: Yes, Your Honor.

9           THE COURT: Okay. Does the government -- I have  
10          the government's submission that includes various victim  
11          impact statements.

12          Is there anybody the government has with you in the  
13          courtroom asking to be heard live today?

14          MS. HAJJAR: No, Your Honor. I will just say that  
15          one victim family member has asked me to read a portion of  
16          the statement that was submitted that was already submitted  
17          to Your Honor. With your permission I will do so, but  
18          otherwise, I don't expect the victim will be here today to  
19          address the court today.

20          THE COURT: Okay. Yes, I will be happy to give you  
21          that opportunity.

22          So turning to the guilty plea, the crimes of  
23          conviction here, Mr. Lopez pleaded guilty before me on July  
24          26th of last year to the counts I mentioned before.

25          Count 2 charged sexual exploitation of a child on

1           March 10th of 2011. Count 4 charges the same on February 5th  
2           -- excuse me, February 15th of 2012. Count 5 the same sexual  
3           exploitation of a child on June 24th, 2013. Count 6, the  
4           same on May 12th, 2015. Count 7, the same on July 29th,  
5           2017. Count 8, the same on August 9th, 2017. Count 9, the  
6           same on March 23rd, 2018. Count 10, the same on August 2nd,  
7           2019. Count 11, the same on August 21st, 2019.

8                         So those are nine counts alleging sexual  
9                         exploitation of various children beginning with count 2 in  
10                        2011 and continuing through count 11 in 2019.

11                       Count 12, to which Mr. Lopez also pleaded guilty,  
12                       charged possession of child pornography.

13                       The sexual exploitation charges that I listed,  
14                       relate to violations of 18 U.S. Code, Section 2251 and the  
15                       last count of possession of child pornography a violation of  
16                       18 U.S. Code, Section 2252.

17                       And I'll talk in a bit about the minimum and  
18                       maximum punishments associated with each of those provisions.

19                       In terms of the documents in my possession, I have  
20                       the pre-sentence report filed on January 4th, 2022, the  
21                       Probation Department's initial sentence recommendation dated  
22                       January 4th, and a revised sentence recommendation also from  
23                       the probation department, dated March 23rd.

24                       Does the defense have the Probation Department's  
25                       sentence recommendations?

1 MS. GELERTN: Your Honor, I believe, I'm not sure  
2 that I received the second recommendation. I received an  
3 addendum, but I don't know if there's a second document.

4 THE COURT: Okay. It is my practice to put the  
5 recommendations from the Probation Department on the record  
6 at sentencing. I do that because even though, of course,  
7 those recommendations are not binding on me, they are  
8 important in my thought process.

9 The Probation Department sees every defendant  
10 sentenced in this district and they have more context  
11 regarding the way court sentences various defendants for  
12 various crimes than any individual judge in this building  
13 does and because I consider that recommendation, I think it's  
14 only fair that I share it with the parties and I will do so  
15 today.

16 There is an addendum to the PSR that Ms. Gelernt  
17 just mentioned, dated March 18th, 2022. That was dealing  
18 with a purported 1997 conviction and 30 month sentence, 3-0  
19 month sentence in Columbia.

20 It dealt with a guilty plea that was entered and  
21 then vacated in New York State Court that dealt with some of  
22 the conduct either charged in or overlapping with this case  
23 and we'll talk about that a little bit as well. And it  
24 contained an employment history update regarding Mr. Lopez.

25 I have the defendant's sentencing memorandum dated

1           March 11th, 2022. I have the government's memorandum dated  
2           March 25th, 2022, and I have one document containing a series  
3           of victim impact statements provided by the government. I  
4           don't think that that document has a date on it, but it is  
5           five pages long.

6                         Is that all the victim impact statements I should  
7           have in this case?

8                         MS. HAJJAR: Yes, Your Honor.

9                         THE COURT: Okay. Is there anything else from the  
10           government's perspective that I should have?

11                         MS. HAJJAR: No. Thank you, You Honor.

12                         THE COURT: Anything else from the defense  
13           perspective?

14                         MS. GELERT: No, Your Honor. Thank you.

15                         THE COURT: Okay. All right. So we are all  
16           working off the same information here.

17                         Ms. Gelernt, have you and your client read and  
18           discussed the pre-sentence report in this case?

19                         MS. GELERT: We have, Your Honor.

20                         THE COURT: And have you had a sufficient  
21           opportunity to discuss any issues?

22                         MS. GELERT: Yes, Your Honor.

23                         THE COURT: Putting aside the guidelines  
24           calculations, do you have any unresolved objections to the  
25           PSR at this point?

1                   MS. GELERTN: No, Your Honor. I think Probation  
2 has responded. Whether or not we're in agreement regarding  
3 the factual dispute, is a separate matter. But I don't think  
4 there's anything else that hasn't been addressed.

5                   THE COURT: Okay. So no factual disputes that  
6 you're looking for me to resolve with respect to the  
7 guidelines?

8                   MS. GELERTN: No, Your Honor.

9                   THE COURT: All right. I will say in respect of  
10 Probation's reference to a 1997 conviction on corruption  
11 charges in Columbia, it does seem odd to me that it's  
12 possible that that could happen and the defendant not  
13 remember serving 30 months incarceration for corruption, but  
14 I don't believe I need to resolve that because it will not  
15 affect my views on sentencing here today one way or the  
16 other.

17                  MS. GELERTN: Your Honor, I guess I should clarify.  
18 I believe originally in the pre-sentence report it didn't  
19 necessarily specify the sentencing. There was an issue when  
20 Mr. Lopez was in (phone ringing) -- I apologize --

21                  THE COURT: That's okay.

22                  MS. GELERTN: -- when Mr. Lopez was in Columbia  
23 where his identification was stolen and where there was an  
24 ongoing issue about that. But I don't want to -- we're not  
25 asking for a *Fatico* hearing on that. Given that it's over 25

1       years ago and the court has already indicated that it doesn't  
2       intend to factor that into it's sentencing analysis here, I  
3       don't think it is wise to belabor it.

4                     THE COURT: Yeah, I confirm, it's irrelevant to the  
5       determination on sentencing that I will make today.

6                     MS. GELERTN: Thank you, Your Honor.

7                     THE COURT: Okay. And I take it neither party is  
8       seeking an evidentiary hearing on any issue?

9                     MS. GELERTN: No, Your Honor.

10                    MS. HAJJAR: That's correct, Your Honor.

11                    THE COURT: Okay. All right. Turning then to the  
12       sentencing guidelines. Are we all in agreement that the  
13       sentencing guidelines calculation laid out in the  
14       government's sentencing submission is the correct one?

15                    You lay out in your sentencing submission a count  
16       by count application of the sentencing guidelines. You then  
17       total them, the total and the aggregation analysis yield a  
18       guidelines range of life, which is not really a range.

19                    We all agree I think that no individual count of  
20       conviction permits a life sentence on that one count and,  
21       therefore, the guidelines are largely beside the point here  
22       today even though, of course, I will consider them on a count  
23       by count basis.

24                    But just in terms of whether the individual  
25       calculations for each count are accurate, I take it we don't

1 have a dispute over the submission that the government made,  
2 is that correct?

3 MS. HAJJAR: Really not from the government. This  
4 calculation differs slightly from the calculation that was  
5 set forth in the plea agreement, but the government agrees  
6 with Probation's analysis and believes the base offense level  
7 of 51, that's taking into account all the grouping analysis  
8 and the way the guidelines work for multiple victims is  
9 correct.

10 So that leads us -- that's off the charts, that  
11 leads us to a 43 offense level which corresponds to a  
12 guidelines term of life imprisonment.

13 THE COURT: Okay. Ms. Gelernt, do you agree with  
14 that assessment?

15 MS. GELERNT: Yes, Your Honor, but I think as the  
16 court pointed out, essentially because the guidelines are at  
17 life and none of the statutes of conviction carry a  
18 possibility of an actual life sentence, the effective  
19 guideline range becomes multiples of the maximums for each  
20 count of conviction which I think is how probation analyzed  
21 it, if that makes sense.

22 THE COURT: Okay. I think we're all on the same  
23 page.

24 MS. GELERNT: Correct.

25 THE COURT: And I think one implication of us all

1           being on the same page is that we don't have to go through  
2           the guidelines calculation for any count to resolve any  
3           disputes about how the guidelines would apply to that count  
4           individually, correct?

5           MS. GELERTN: Correct, Your Honor.

6           MS. HAJJAR: That's correct, Your Honor.

7           THE COURT: Okay. All right. So is there anything  
8           Probation wants to add on that subject? I'm not sure anything  
9           is necessary, but let me just give you the opportunity?

10           THE PROBATION DEPARTMENT: No, Your Honor, that's  
11           accurate. Thank you.

12           THE COURT: Thank you. Okay. So we mentioned that  
13           the guidelines, as well, the defendant is in criminal history  
14           category 1, that's predicated on a criminal history score of  
15           zero points. The guidelines range for each offense we just  
16           took up. The guidelines range for supervised release is five  
17           years per count, correct?

18           MS. HAJJAR: A minimum of five years, so yes, the  
19           guideline range would be five year to life on each count.

20           THE COURT: Right. And we'll talk about the  
21           statute in a minute as it relates to the supervised release.

22           Probation's recommendation was initially that on  
23           count 2 and counts 4 through 11, I sentence the defendant to  
24           50 years, 5-0, in the custody of the attorney general on each  
25           count, all to run concurrently. That was predicated on

1 Probation's original understanding of the statutory maximum  
2 which apply to higher statutory maximum in recognition of the  
3 state court conviction for sexual exploitation that relates  
4 to some of the same conduct in this case.

5 I think everybody now acknowledges that that  
6 conviction has been vacated and, therefore, should not affect  
7 the statutory maximum and in recognition of that agreement,  
8 Probation's revised sentence recommendation recommends that  
9 on count 2 I sentence Mr. Lopez to 20 years in the custody of  
10 the attorney general to run consecutively to all other counts  
11 and that on counts 4 through 11, Mr. Lopez be sentenced to 30  
12 years in the custody of the attorney general. Those counts 4  
13 through 11 to run concurrently to each other and to count 12,  
14 but consecutively to the 20 years in count 2.

15 So essentially a 50 year total for counts 2 through  
16 11 -- or 2 and 4 through 11. And on count 12, five years in  
17 the custody of the attorney general to run consecutively to  
18 the sentence on count 2 and concurrently to counts 4 through  
19 11.

20 And so I think when you stack those, if I  
21 understand what Probation is doing, you end up with a total  
22 sentence of 50 years. Is that correct?

23 THE PROBATION DEPARTMENT: That is correct, Your  
24 Honor. Our position really is that although the statutory  
25 requirements have changed, the underlying facts of the case  
have not. So our actual recommendation remains unchanged.

1       We just had to sort of change the mechanisms of how we  
2       recommend you impose it.

3                     THE COURT: Understood. Probation also recommends  
4       five years supervised release on each count all to run  
5       concurrently and a number of special conditions of supervised  
6       release that we will talk about later in this proceeding.

7                     Okay. So in terms of the statutory provisions,  
8       we've talked a little bit already, we all agree now that on  
9       count 2 and counts 4 through 11, the mandatory statutory  
10      minimum is 15 years, 1-5, for each of those counts and  
11      there's a maximum -- statutory maximum of 30, 3-0, years on  
12      each of those counts under 18 U.S. Code, Section 2251(e).

13                  Count 12, the child pornography count has no  
14      mandatory minimum and a statutory maximum penalty of ten  
15      years under 18 U.S. Code, Sections 2252(a)(4)(b) and (b)(2).

16                  The maximum fine by statute is \$250,000 on each  
17      count under 18 U.S. Code, Section 3571(b) and in addition to  
18      the mandatory \$100 special assessment on each count, which is  
19      \$1,000 total special assessment under 18 U.S. Code, Section  
20      3013, there are statutory -- specific statutory special  
21      assessments in the statutes of conviction in this case that  
22      we will also consider later.

23                  The Justice for Victims of Trafficking Act of 2015  
24      calls for an assessment of \$5,000 per count on any non-  
25      indigent person who's convicted of the crimes at issue here,

1 I believe.

2 And on Count 12, the government is going to correct  
3 me if I'm getting any of this wrong, on count 12 the  
4 defendant is subject to the provisions of the Amy, Vicky, and  
5 Andy Child Pornography Victim Assistance Act of 2018 which  
6 provides that in addition to other special assessments  
7 authorized by law, I shall assess not more than \$17,000.

8 Additionally, under 18 U.S. Code, Section 2254 -- excuse  
9 me, 2252(a)(4) and not more than \$35,000. And to the extent  
10 the offense involves the production of child pornography, the  
11 special assessment can be as high as \$50,000.

12 I think the special assessment provisions that I'm  
13 talking about now may be academic in this case, given the  
14 fact that Mr. Lopez has no assets to speak of according to  
15 the pre-sentence report and obviously given the priority of  
16 restitution to the victims over any special assessment that  
17 would be paid to the government. Is that correct?

18 So we will impose, of course, the mandatory \$100  
19 special assessment for each of the ten counts of conviction.

20 Are any of the other special assessments that I've  
21 just discussed mandatory by operation of statute or does the  
22 indigence remove the obligation to impose those assessments?

23 MS. HAJJAR: If I could just have one moment to  
24 confer with Probation, Your Honor?

25 THE COURT: Yeah, please.

1                   MS. HAJJAR: Your Honor, I wanted to confirm with  
2 Probation about the TVPA's \$5,000 assessment. I was under  
3 the impression it was mandatory, but as Probation points out  
4 in the PSR, this is paragraph 171, it is the court shall  
5 assess an amount of \$5,000 on any non-indigent party.

6                   And so with the court's finding that Mr. Lopez is  
7 indigent, given what's in the PSR, I think the only mandatory  
8 assessments are the \$100 per count.

9                   THE COURT: Okay. So there will be \$1,000 total of  
10 special assessments imposed as part of sentence here and the  
11 additional statutory assessments, Mr. Lopez will not be  
12 subject to, given the indigence finding and the restitution  
13 that we're contemplating.

14                   MS. HAJJAR: That's correct, Your Honor.

15                   THE COURT: Okay. And then turning to restitution,  
16 my high level question here is whether we are going to  
17 resolve the restitution issue today or whether we should use  
18 the 90 days that are accorded to us by statute, to make sure  
19 we have everything we're going to get on restitution.

20                   My instinct is the latter, that we should see if  
21 anything else comes -- I know you've made attempts to reach  
22 out to other victims. It's possible that other victims will  
23 reach out to you, especially if there's some publicity  
24 associated with today's proceeding. I don't know. It seems  
25 to me there's no reason to resolve restitution today and we

1 can take it up sometime in the next three months.

2 MS. HAJJAR: That's right, Your Honor. I would say  
3 the court could order the \$24,000 that is currently requested  
4 by the victims of the possession of child pornography that  
5 was based on the request previously submitted by those  
6 victims.

7 The government has not yet received restitution  
8 requests from the victims of the production counts. I would  
9 ask that the court leave open the possibility of so imposing  
10 such restitution orders within the next 90 days so that if  
11 victims were to put forward restitution requests, we could  
12 convey those to counsel and the court.

13 THE COURT: Okay. So this is the -- there are one,  
14 two, three, four, five, six, seven -- seven victims  
15 identified by pseudonyms as victims depicted in series of  
16 child pornography that are identified as Blues Pink 1,  
17 Cinderblock Blue, Jenny, Jessica, Misty and the last series  
18 identifier is all one word, Teal&pinkprincess2, is that who  
19 we're talking about here?

20 MS. HAJJAR: Yes. I believe it's eight -- I have  
21 it as eight victims if that's not correct. I think that's  
22 based on victim Tara that's referred to in paragraph 44 and  
23 that is included in the \$24,000. Probation calculated \$3,000  
24 for each victim.

25 THE COURT: Oh, I see. And does Tara need to be

1                   associated with a particular series?

2                   MS. HAJJAR: That is a series, Your Honor. I think  
3                   it's a Tara series.

4                   THE COURT: Oh, okay.

5                   THE PROBATION DEPARTMENT: That's correct, Your  
6                   Honor.

7                   THE COURT: And, I'm sorry, remind me of what  
8                   paragraph in the PSR you just said?

9                   MS. HAJJAR: It's paragraph 44. Probation notes  
10                  that the victim depicted in the Tara series also included a  
11                  claim to restitution. And so has asked for restitution in  
12                  connection with that victim as well.

13                  THE COURT: Okay. And Ms. Gelernt, if I were to  
14                  proceed in that fashion, specifically by ordering restitution  
15                  today in those amounts for those eight victims and then to  
16                  the extent any other victims are identified, we take that up  
17                  at some point in the next 90 days, is that something the  
18                  defense wants to be heard on? I think you -- is there an  
19                  agreement on restitution?

20                  MS. GELERNT: Your Honor, I don't think that we're  
21                  going to challenge restitution at this point. I think at  
22                  some point it's somewhat academic given the likely sentence  
23                  for Mr. Lopez and his inability to pay.

24                  I think what we're really talking about is a  
25                  portion of his commissary being conscripted while he's in.

1       So I don't have an objection. I know that Paroline asked the  
2       court to actually consider whether or not victims are  
3       obtaining restitution sort of endlessly that's going beyond  
4       what actually serves as restitution, but we're not going to  
5       objection if the court proceeds in that way.

6                   THE COURT: Was that a case name that you just  
7       invoked?

8                   MS. GELERTN: Yeah.

9                   THE COURT: Spell it for me?

10                  MS. GELERTN: P-A-R-O-L-I-N-E, it's the case that  
11       stands for the proposition that restitution must be related -  
12       - proximately related to the harms caused by each individual  
13       victim and so in the government's view and in Probation's  
14       view, I believe, these \$3,000 amounts per victim do represent  
15       what was the harm that was proximately caused to that  
16       particular victim based on the number of images possessed by  
17       the defendant.

18                  The actual damages each of those victims have asked  
19       for are far in excess of -- in total, I mean, of all  
20       offenders possessing images of course, far in excess of the  
21       amount requested for each individual offender.

22                  THE COURT: Right. And if the numbers are fixed  
23       today, I don't understand how we have the issue that defense  
24       counsel invoked about restitution being paid in perpetuity.  
25       It's only going to be paid in perpetuity to the extent it

1 just hasn't been paid off. But it's not a moving target --

2 MS. GELERTN: No, no. I'm sorry, and perhaps I  
3 shouldn't have said anything since we're not going to  
4 actually object.

5 The idea or one of the ideas behind it is if at a  
6 certain point if there is -- since restitution has to be  
7 linked to actual harm and causation, if there are numerous  
8 and numerous defendants each paying \$3,000 as it actually  
9 serving to go towards the causation of harm or at some point  
10 has the victim been compensated for the harm, is the idea.  
11 So if he harm -- I mean it's hard to ever associate a dollar  
12 amount with the harm that he's caused --

13 THE COURT: Right.

14 MS. GELERTN: -- but if he were to pay --

15 THE COURT: But from a theoretical perspective,  
16 isn't it the case that each viewing is a new instance of harm  
17 at least arguably?

18 MS. GELERTN: That's the government's perspective  
19 at a certain point and nobody actually ever and I think there  
20 are much greater issues here today and I know Mr. Lopez is,  
21 you know, extremely anxious to just move forward.

22 The idea is if somebody had assessed that the  
23 victim should receive a million dollars in pain and suffering  
24 for the damage that was caused, at a certain point if nobody  
25 is looking at how many people have been ordered to pay \$3,000

1       or \$5,000 in restitution, it can actually, the individual  
2       restitution amounts can actually total more than the amount  
3       of damage, was part of the idea.

4                   Nobody is actually looking at itemizing what was  
5       the harm caused through any sort of actuarial analysis. But  
6       we're not objecting, we're not going to take the position,  
7       and by the terms of our plea agreement, we agreed to the  
8       guidelines range on -- and things like that.

9                   But so this is sort of -- while it's significant,  
10      it's the least significant affect of the sentence the court  
11      will impose today on Mr. Lopez, so I don't want to belabor it  
12      more than I already have probably unnecessarily.

13                  THE COURT: Okay. No, it's fine. But so where we  
14      are coming out on this is that to the extent I'll be ordering  
15      \$24,000 in restitution to those eight victims today, there is  
16      no objection.

17                  MS. GELERTN: There is no objection. That's  
18      correct.

19                  THE COURT: Okay.

20                  MS. GELERTN: And we would just ask that when there  
21      are -- if there are additional claims, we receive notice of  
22      that in case there is some objection to it.

23                  THE COURT: Understood. Okay. So that takes us  
24      through the PSR, the application of the guidelines and the  
25      statutory punishment provisions at issue.

1                   As I mentioned earlier, I have reviewed the parties  
2 written sentencing submissions which I thought were very  
3 comprehensive all around.

4                   Ms. Galernt, do you wish to be heard further at  
5 this time?

6                   MS. GELERTN: Yes, Your Honor. Thank you. As the  
7 court is aware by terms of our plea agreement, we're  
8 constrained not to request a downward variance below 25 years  
9 however the court were to arrive at that number.

10                  And for the purposes of this application, I'm just  
11 going to talk about the sentence in terms of an aggregate  
12 number rather than specifically as to each count because I  
13 think that's really at the heart of the matter, what the  
14 total sentence will be.

15                  I know that the court is aware that it has the  
16 power to sentence Mr. Lopez to a minimum of 15 years. The  
17 government has requested a life sentence and I believe the  
18 total maximum sentence in this case given what everybody has  
19 agreed on, on the maximum penalties, is I believe 280 years,  
20 If I'm calculating correctly.

21                  But given Mr. Lopez's age, there is a fact that  
22 even a mandatory minimum sentence could end up being a life  
23 sentence. He's 66 years old now and even a 15 year sentence  
24 would result in him being incarcerated until he's about 80.

25                  The first point that we addressed in our sentencing

1 memorandum, was Mr. Lopez's acceptance of responsibility.

2 And we submitted to the court that Mr. Lopez has actually  
3 shown an extraordinary acceptance of responsibility in this  
4 case, and actually not just in this case, but in the state  
5 case as well.

6 As the court is aware, in that case Mr. Lopez  
7 actually waived a grand jury presentation and pled guilty  
8 rather quickly to a sentence that -- the promised sentence  
9 was 19 years.

10 And here Mr. Lopez accepted a plea agreement where  
11 he couldn't ask for less than 25 years meaning the earliest  
12 he would have hoped to be released would at approximately 90.  
13 With the understanding that if the court were to impose a  
14 sentence well in excess of life, he would be constrained and  
15 not be permitted to appeal.

16 So I do think that shows an extraordinary  
17 acceptance of responsibility on his part and I don't think  
18 the fact that through the advice of counsel, he vacated the  
19 state court pleas which were interrelated, negates that.

20 This was a very difficult choice even for me as an  
21 attorney to advise somebody to accept a plea knowing that the  
22 government would come in and ask for the equivalent of a life  
23 sentence and knowing that given the nature of the crimes, the  
24 court might find itself wrestling with that.

25 I think Mr. Lopez's acceptance of responsibility

1                   warrants a downward variance not just because it's about him  
2                   and his reflection on the seriousness of the crime, but also  
3                   because of what it says to other similarly situated  
4                   defendants and defense counsel.

5                   I think one of the concepts we're familiar with in  
6                   this courthouse when we're dealing with something that I  
7                   would suggest is somewhat analogous to this situation is  
8                   cooperators who are being sentenced pursuant to 5K motions  
9                   where the government is asking for downward departures from  
10                  statutory minimums, mandatory minimums, or from guidelines  
11                  ranges.

12                  And one of the reasons the court grants a downward  
13                  variance or downward departure in that circumstance, is not  
14                  just because of that the defendant in that situation should  
15                  receive a benefit from being willing to come forward and  
16                  assist the government, but that it would encourage other  
17                  people to do so as well in the future with the understanding  
18                  that justice is administered more fairly or more equitably  
19                  when more people are willing to cooperate.

20                  I think that's true for these types of cases. Mr.  
21                  Lopez by his plea, has spared the victims from going through  
22                  a protracted trial.

23                  If we, as Your Honor just referenced, agree that  
24                  every viewing of child pornography is an additional harm, Mr.  
25                  Lopez has spared the victims in this case, the additional

1                   harms that would come from the child pornography being played  
2                   again for members of the community and jurors and sitting  
3                   through that trial.

4                   So I think that in and of itself is worthy of a  
5                   downward variance, but I also think it's important that  
6                   similarly situated defendants understand that there is some  
7                   benefit to accepting responsibility to pleading guilty even  
8                   when the best they can hope for, may be the equivalent of a  
9                   life sentence for Mr. Lopez.

10                  So somebody else making this choice might also see  
11                  that the court was aware that they spared the victims harm  
12                  and did actually show compassion or adjust their sentence  
13                  accordingly and it might encourage future defendants and  
14                  certainly future defense counsel to advise their clients to  
15                  take a plea as well in this situation.

16                  I think one of the things we grappled with or I  
17                  grappled with in trying to discuss what an appropriate  
18                  sentence is for the court, is that in no way do we want to  
19                  diminish the serious nature of the crimes here, or what the  
20                  victims suffered.

21                  I think there is no way to diminish that, there's  
22                  no way to minimize the seriousness of the conduct especially  
23                  protracted harm that occurred over many years.

24                  That being said, the seriousness of the offense and  
25                  the need for punishment are not the only matters the court

1 has to consider.

2 I also do want to emphasize as I did in my  
3 submission, that in this case there is a practical difference  
4 between, and a real life difference, between sentencing Mr.  
5 Lopez to the maximum or 280 years as the government will ask  
6 for, since a life term is not available, and sentencing Mr.  
7 Lopez to a number that may actually turn out to be the  
8 equivalent of his natural life, but is say the 25 years we're  
9 constrained to ask for.

10 And we discussed one of those differences in our  
11 submission and that is that the way the bureau of prisons  
12 structures designations is that if the court were to give Mr.  
13 Lopez a sentence of say 100 years or 200 years, he would be  
14 designated to a maximum security facility according to BOP  
15 regulations.

16 I think the parties may dispute whether or not Mr.  
17 Lopez would be a danger released to the community in terms of  
18 even if he were 80 or 90 years old, but I don't think there  
19 can be any real dispute that while incarcerated he presents  
20 no danger.

21 He's been incarcerated now actually since October  
22 of 2019 because he was originally arrested in the state and  
23 he was brought into federal custody in February of 2020,  
24 shortly before the onset of the pandemic.

25 So he's now been incarcerated at the MDC for over

1           two years without incurring any type of disciplinary  
2           infraction. He's one of the few detainees who actually found  
3           some productive programming to participate in.

4           So I don't think anybody really has a concern that  
5           while incarcerated, Mr. Lopez presents a danger such that it  
6           would be necessary to house him in one of the most secure  
7           facilities available.

8           I also discussed that one of the other factors the  
9           court has to consider is the need for educational,  
10           vocational, or correctional treatment.

11           I think in these types of cases what we often talk  
12           about in terms of the need for correctional treatment, is sex  
13           offender treatment while in custody.

14           In my research the only facility that offered that  
15           as a high security facility, was the facility in Tucson which  
16           would cause substantial hardship to not only Mr. Lopez, but  
17           his family.

18           As the court is aware he has family local here in  
19           addition to the family in Queens who would be unable to visit  
20           him if he were designated to Tucson.

21           We are going to ask that the court designate Mr.  
22           Lopez or recommend the designation to Butner in North  
23           Carolina which is actually -- it has a medical facility which  
24           can treat not only Mr. Lopez's current medical needs, but the  
25           reality of somebody aging in prison is that they're likely to

1 have increased medical needs and Butner has not only a sex  
2 offender treatment program, but it's attached to a federal  
3 medical center and there's a minimum and medium facility all  
4 within the same complex of prisons. So we do believe that  
5 would be appropriate.

6 So I think the need for correctional treatment some  
7 place where his family could visit, also mitigates in favor  
8 of sentencing Mr. Lopez to something more in the range of  
9 what we are constrained to ask for.

10 The other issue in terms of sentencing him to  
11 hundreds of years or 50 years, is that Mr. Lopez will have no  
12 ability to be stepped down from levels of security.

13 So as we noted in our sentencing submission, if  
14 somebody is a deportable, non-citizen, the security factors  
15 can't be waived.

16 And you have to have under 30 years left on a  
17 sentence to get moved from a maximum to a medium and then  
18 under 20 years to get moved to a low level facility.

19 So with a sentence of the nature that the  
20 government will ask for even that Probation is going to ask  
21 for, it is unlikely that Mr. Lopez would ever even find  
22 himself at the time frame where he could be stepped down in  
23 the levels of security.

24 If he were to be sentenced to 50 years say, he  
25 would have to serve approximately 20 years before he could be

1 stepped down to a lower level facility.

2 So I think that also weighs of favor of sentencing  
3 Mr. Lopez to a sentence that would still be significant, may  
4 in fact result in a life sentence, but would allow him to be  
5 properly designated in a facility where he can get treatment  
6 not only for what is obviously a very severe issue, a mental  
7 health issue, but also would provide him with the necessary  
8 medical treatment going forward.

9 You know, there's the sort of an old Dostoevsky  
10 quote that says that you can judge the degree of the  
11 civilization in a society by entering its prisons and I think  
12 anybody having entered the MDC during the last two years,  
13 would certainly have questions about that.

14 Not just because of the punitive nature of the lock  
15 downs, but sort of the ill repair and under staffing that's  
16 gone on partly as a result of the pandemic, but partly as a  
17 result of systemic issues that have occurred in the bureau of  
18 prisons.

19 Though we certainly understand that Mr. Lopez has  
20 not come close to beginning to serve what is an appropriate  
21 sentence in this case, I think it should be acknowledged that  
22 the last two and a half years have been extremely harsh in  
23 terms of the excessive lock downs that have occurred within  
24 the facility as well as the limitations on ability to  
25 communicate with not only family and friends, but counsel and

1 just the general lack of conditions in terms of food, heating  
2 and everything that inmates have experienced at the MDC.

3 And numerous judges as we cited in our sentencing  
4 submission, have found that an appropriate reason for a  
5 downward variance.

6 I think it's also important to look going forward  
7 because what we've also seen is that the Bureau of Prisons is  
8 now responding to various incidents with nationwide lock  
9 downs.

10 I think the court may be aware that there was  
11 recently an incident in Texas where two inmates were killed  
12 and as a result, the bureau of prisons locked down the entire  
13 country nationwide without exploring whether there was an  
14 individualized threat at each facility.

15 The reason I point this out, is I think it tells  
16 you what Mr. Lopez is likely to experience in the next  
17 decades of his life in prison.

18 I don't think, although we hope to be out of the  
19 woods in terms of the pandemic, I think it's likely that Mr.  
20 Lopez will experience similar conditions wherever he gets  
21 designated at various intervals throughout his incarceration.

22 I think the Dostoevsky quote is important for  
23 another reason also, is I think it also instructs the court  
24 that no matter how heinous the crime, no matter how horrible  
25 the conduct, we still have to consider the individual and we

1 still have to -- prisons shouldn't be designed to torture  
2 somebody, to hold them in inhumane conditions.

3 And I think for a man Mr. Lopez's age with his type  
4 of conviction, sending him to a maximum security federal  
5 penitentiary, may actually be that kind of treatment.

6 So for all of those reasons, we would ask the court  
7 to consider sentencing Mr. Lopez downwardly varying and  
8 sentencing Mr. Lopez to what it sees fit or what we're  
9 constrained to ask for, which is 25 years as an aggregate  
10 sentence.

11 THE COURT: Thank you. Two questions for the  
12 defense.

13 First, what was the legal reason -- the legal basis  
14 for vacating the plea in state court?

15 MS. GELERTN: So the legal basis was that Mr. Lopez  
16 had actually already been indicted here at the time of his  
17 plea in state court. He -- the prosecutor in Queens was  
18 actually thanked in a press release here when the indictment  
19 was obtained and his lawyer in the state never advised him  
20 that he'd been indicted and he was never told that there were  
21 other charges pending. And based on that, my understanding  
22 is that the district attorney agreed to allow him to vacate  
23 his sentence. It was also --

24 THE COURT: On something like the basis that the  
25 plea was not knowing and voluntary in the state court?

1                   MS. GELERTN: Yes. I mean my position when I saw  
2                   that was that he had received ineffective assistance of  
3                   counsel.

4                   THE COURT: Right.

5                   MS. GELERTN: And I don't have -- I had the  
6                   document indicating that it was vacated and my understanding  
7                   is that the parties agreed to vacate the plea in advance of  
8                   an evidentiary hearing so I don't know whether it was  
9                   explored, you know, what obligation the Queens prosecutor had  
10                  to acknowledge that there were other charges pending at the  
11                  time that the plea was entered. But I think, it's my  
12                  understanding that the parties agreed that it would be  
13                  appropriate to vacate that plea.

14                  It's also my understanding that there is an overlap  
15                  of victims in this case and the charge of conviction there.  
16                  So -- and I think there was also an understanding at the time  
17                  that they agreed to vacate the plea, that Mr. Lopez would be  
18                  pleading guilty here and what type of sentencing he was  
19                  facing in this case.

20                  And as we informed the court, it certainly had  
21                  impact on this case in terms of the mandatory minimums and  
22                  maximums for each crime and also if Mr. Lopez had gone to  
23                  trial, how that conviction could have been used in this case.  
24                  But that's something we didn't end up having to address.

25                  THE COURT: And then my last question is, you're

1 telling me that even if Mr. Lopez is to be incarcerated for  
2 what is effectively the remainder of his life, the number of  
3 years incarceration will still matter to the designation to a  
4 maximum security prison, a medium security prison or  
5 otherwise.

6 And that I think I heard you say that if we  
7 sentence the 280 years, he'll be in maximum security  
8 indefinitely.

9 If we sentence him to 25 or something like what  
10 you're asking for, he would be likely to step down, I think  
11 you said, from maximum to medium at some point. I'm not  
12 suggesting that I think this factor should carry the day at  
13 all.

14 Obviously, there are aggravating and mitigating  
15 factors here and some of the aggravating factors we'll talk  
16 about in a moment, are extraordinary in many ways, but I just  
17 want to make sure I understand mechanically what the -- so is  
18 the -- if the step down is not something a defendant is  
19 eligible for until 20 years or fewer remain on the sentence,  
20 I take it the formula I should be working with is, take  
21 whatever sentence is imposed and subtract 20 and if the  
22 remaining number exceeds Mr. Lopez's life expectancy, then  
23 that would be essentially a sentence to maximum security for  
24 the remainder of his life. Is that --

25 MS. GELERTN: If I'm following Your Honor's math, I

1 apologize. So my understanding from reading and reviewing  
2 the BOP regulations, is that because Mr. Lopez is a  
3 deportable non-citizen, which likely -- he was a legal  
4 permanent resident and he's a Columbian citizen. So it's  
5 clear that based on the nature of these convictions, he's --

6 THE COURT: Deportable.

7 MS. GELERTN: -- deportable. So my reading of the  
8 bureau of prisons regulation, is that he's not eligible for a  
9 waiver because of that and so individuals with 30 years  
10 remaining on their sentence, have -- 30 or more remaining on  
11 their sentence, have to be in a high security. Between 20  
12 and 30, it's medium and then under 20 they can get stepped  
13 down.

14 THE COURT: I see.

15 MS. GELERTN: And it apparently from the bureau of  
16 prisons regulations, there is -- if you're not eligible for a  
17 waiver, which the non -- the deportable non-citizen isn't,  
18 then there is no way to get out from under that. And that's  
19 based on their published regulations which I believe I cited  
20 to the court.

21 So and I -- you know, and I guess the court started  
22 to address what are the aggravating factors in this case and  
23 in some ways I suppose I should touch on this.

24 We've been very circumspect in terms of not wanting  
25 to lay any of the blame or causation on factors in Mr.

1 Lopez's life.

2 I think we directed the court to certain things  
3 that happened to Mr. Lopez's life in terms of his  
4 victimization both by his father in terms of physical abuse,  
5 and by a very brutal incident of sexual abuse early in his  
6 life.

7 I sort of felt that I didn't want to spend too much  
8 time on those issues because I didn't think that in assessing  
9 the appropriate sentence, that could nearly rise to the level  
10 to explain the conduct and I wanted to make it clear that  
11 neither myself nor Mr. Lopez really, were in any way trying  
12 to excuse his conduct or negate the seriousness of the  
13 conduct.

14 And so for that reason I also didn't submit letters  
15 on his behalf from his family which really could be viewed by  
16 the court as self-serving or failing to understand the harm  
17 that he had caused.

18 I also think that to the extent that his family  
19 sees him differently and that maintain a close relationship,  
20 I think one of the insidious natures of this crime that I'm  
21 sure the court will touch on and the government will touch  
22 on, is it's that type of duality that allows somebody to  
23 commit this type of crime, that allows them to gain trust.

24 And so I really wanted to focus on what I thought  
25 were the important issues that I think the court still has to

1 consider. Although the crime is horrible, although there can  
2 be no excuse for Mr. Lopez's conduct.

3 So I think the court is still directed to think of  
4 yes, Mr. Lopez may need to be incapacitated by this sentence.

5 He certain needs and should be punished by this sentence, but  
6 it doesn't mean that the punishment should be inhumane which  
7 I think sentencing him to a term of 100 years would result in  
8 something that ultimately was inhumane and not worthy of the  
9 type of punishment and consideration that we think of for  
10 somebody of Mr. Lopez's age who will pose no danger while in  
11 custody.

12 THE COURT: Thank you. Ms. Hajjar, do you want to  
13 be heard?

14 MS. HAJJAR: Thank you, Your Honor, yes.

15 The government is asking that the court impose an  
16 effective sentence of life imprisonment in this case.

17 The guidelines in this case are as we've noted, a  
18 base offense level of 51 which is literally off the charts of  
19 the sentencing guidelines. And that is really because the  
20 crimes here are among the most serious under the law and are  
21 recognized as such.

22 I'm not going to describe the offense conduct in  
23 detail because I know Your Honor has read the government's  
24 sentencing memorandum and it is set forth in detail there,  
25 but this case is extraordinary in terms of the age of the

1                   victims that were abused, the length of time in which the  
2                   abuse took place, the nature of the sexual acts that were  
3                   depicted in the child pornography that the defendant created,  
4                   and the number of children abused.

5                   This is really the worst of the worst. It is the  
6                   worst case that certainly that Special Agent Steeva has seen  
7                   in his career at the FBI and I as a prosecutor. It is  
8                   extraordinary in terms of the length of time and the age of  
9                   the victims.

10                  The defendant pled guilty to nine counts related to  
11                  the sexual exploitation of at least eight different victims,  
12                  but as the PSR notes, law enforcement seized over 13,000  
13                  files of child pornography depicting at least 28 different  
14                  victims. The abuse took place over a decade and some of the  
15                  victims the defendant abused, that abuse began shortly after  
16                  their birth as infants.

17                  As Your Honor knows, the government has been in  
18                  contact with the families of the victims in this case. Some  
19                  have indicated they will not be attending the sentencing  
20                  because of the emotional toll and trauma that this case has  
21                  caused, but asked me to convey to the court the devastation  
22                  of the defendant's actions have caused them and their  
23                  children.

24                  Child rape especially the prolonged abuse over  
25                  years that the defendant engaged in here, has unimaginable

1 impacts on a child.

2 It can destroy families and have long-standing  
3 consequences on the child's development, the child's ability  
4 to develop relationships in the future, their understanding  
5 of trust, and in every sort of facet of their lives going  
6 forward and not just the child, but the child's family as  
7 well.

8 In particular the family member of additional  
9 victims one and two have asked that I read a portion of the  
10 victim impact statement, the lengthy statement that was  
11 provided to the court and ask that I read it on their behalf.  
12 May I do so?

13 THE COURT: Yes.

14 MS. HAJJAR: I'll refer to additional victim two as  
15 Jane Doe just for the purposes of the statement.

16 Jane Doe's abuse started as a little girl and it  
17 had just come to the attention of her father in February of  
18 2021.

19 It took immense courage on Jane Doe's behalf to  
20 come clean to her father about the tormenting secret she'd  
21 been living with for years. She described in detail the  
22 abuse she had to face by this monster, Orlando Lopez.

23 Her father had no choice but to be strong for his  
24 daughter, but the days following the information he found out  
25 were grim beyond belief. He was sick to his stomach for

1 days, vomiting uncontrollably, physically sick.

2                   Her father blames himself for not being able to be  
3 home to protect his daughter while he was working trying to  
4 provide for his family. He says if he was present at this  
5 time, this wouldn't have happened to Jane Doe.

6                   Since finding out the news, her father deals with  
7 enormous guilt haunting him every single day. He still  
8 struggles with unanswered questions, doubts, a lot of  
9 information that will always be debatable.

10                  Her father has not been able to return to a stable  
11 full time job as he feels it's important he never leaves Jane  
12 Doe's side. This has put a huge financial stress on the  
13 family.

14                  Every month we are struggling with bills because  
15 her father has never been the same and will never been the  
16 same. While this information has created an unbreakable bond  
17 between the two, it is something that he has not been able to  
18 recuperate from.

19                  The beginning of 2021 was a life-changing year for  
20 our entire family as we had to move out of the state to New  
21 Jersey because Jane Doe could not stand being in the same  
22 apartment where the abuse occurred.

23                  She describes being in the same bedroom where  
24 Orlando would sexually abuse her and describes seeing this  
25 monster in her nightmares every single night. Jane Doe

needed a complete change of environment as she was also experiencing trouble in school because of these events.

3 Jane Doe blamed herself for letting the abuse  
4 continue for almost a year until her therapist and father  
5 explained to her numerous times this was not her fault.

Jane Doe lives with the guilt of the other children who were molested because she feels that if she had said something sooner, she could have avoided the trauma others are living with as well.

I personally almost lost my job because I had to be  
in constant support for Jane Doe's father and Jane Doe. I  
had to calling out or coming in late because of all the  
appointments Jane Doe had to attend to help her reach a  
standard level of security for her everyday living.

15                   It's unfortunate that any little girl must deal  
16                   with the overwhelming emotional stress due to the disgusting,  
17                   sickening acts of an elderly man who deserves to rot in  
18                   prison for the rest of his life. It is unimaginable that a  
19                   repelling man's nauseating urges has caused irreversible,  
20                   irreparable, everlasting damage to our entire family.

He had his moments of pleasure while our little girl is stained for the rest of her life. Trauma we must carry throughout our family including her younger siblings over these life-changing events that no child should ever have to deal with. This monster does not have any idea of

1                   the damage he has caused.

2                   That's just an excerpt, Your Honor. I know Your  
3                   Honor has the full victim impact statement which was also  
4                   quoted in the government's sentencing memorandum along with  
5                   several other victim impact statements.

6                   And I think what these impact statements make clear  
7                   is that these victims and their families will be carrying the  
8                   damage of this abuse with them for the rest of their lives.

9                   I'll just briefly address some of the points Ms.  
10                  Gelernt made today.

11                  None of the factors Ms. Gelernt mentioned are truly  
12                  mitigating factors in the sense that they warrant any kind of  
13                  downward departure from the guidelines in this case in the  
14                  government's view.

15                  First of all, there's nothing extraordinary about  
16                  the defendant's acceptance of responsibility in this case.  
17                  The plea agreement in this case was negotiated over a period  
18                  of months.

19                  As part of the plea agreement, the defendant did  
20                  not plead guilty to count 1 which is the most significant  
21                  count which carried a 30 year mandatory minimum.

22                  The government agreed to this plea agreement -- to  
23                  a plea agreement that did not carry a plead to the top count  
24                  in order to spare victims the trauma of having to go through  
25                  a trial in which their testimony would be necessary.

1                   But the defendant's plea of guilty is not an  
2 extraordinary acceptance of responsibility beyond the  
3 acceptance of responsibility that's attended to every plea of  
4 guilty before Your Honor.

5                   Of course it saves the government resources in  
6 terms of having to have a trial and it spares victims from  
7 having to testify at trial, but that's no different from any  
8 other plea of guilty. This is not a situation where we're  
9 talking about a cooperator.

10                  This is not a situation in which the defendant came  
11 forward before charges were brought and negotiated a plea to  
12 an information or anything like that.

13                  This was a run of the mill plea negotiation where,  
14 of course, the government -- there were certain severe counts  
15 the government did not ask the defendant to plead guilty to  
16 as a result of the plea agreement. Yes, and the government  
17 negotiated that the defense would not seek a sentence below  
18 25 years as part of that negotiation. But again, none of  
19 this takes it outside the scope of the ordinary in terms of  
20 acceptance of responsibility.

21                  THE COURT: Can I just get your views of the  
22 institutional dynamics that Ms. Gelernt invoked. I mean, I  
23 understood her analogy, such as it was, to the 5K context to  
24 be a suggestion that there's some degree here to which  
25 leniency might be in the government's interest, the

1 prosecution's interest in the sense that when you have a  
2 defendant who is, you know, subject to life incarceration  
3 before the guilty plea and still subject to life imprisonment  
4 under the guidelines after the guilty plea, right?

5 The three points for acceptance of responsibility  
6 are a rounding error or less in this case, that there's very  
7 little incentive to plead, right?

8 And that therefore the nature sort of path of least  
9 resistance for similarly situated defendants, might be to put  
10 the system to the burden of a trial and more -- much more  
11 importantly to put the victims through the secondary harm  
12 that that might entail.

13 I'm not pushing you on this one way or the other at  
14 all, I'm just asking institutionally, do you think there's  
15 anything to that view or do you disagree entirely?

16 MS. HAJJAR: I think the incentives become  
17 complicated for defendant's where a defendant is facing a  
18 life sentence.

19 However, this is different from a murder trial in  
20 terms of the costs of the defendant himself from going  
21 through a trial like this and the attendant publicity.

22 I would say there are -- there is incentives and  
23 there's value for the defendant as well in terms of ending  
24 and resolving this case quickly and moving to sentencing.

25 Of course, having -- not having sitting through the

1           testimony of small children that he has abused for 10 years,  
2           I think there is value to a defendant in avoiding that.

3           That may not be the case for every defendant and I  
4           certainly, I don't think I've thought enough about this in  
5           terms of institutionally for every defendant, but certainly I  
6           think there is value on both sides for a quick resolution.

7           It wasn't quite quick in this case, but it was negotiated and  
8           I think it was in the interest of both parties to resolve it  
9           this way.

10           THE COURT: That's helpful. Thank you.

11           MS. HAJJAR: With respect to a few other things  
12           that Ms. Gelernt mentioned, I don't think from the  
13           government's perspective, the BOP regulations or designations  
14           should play any part in the court's determination of the 3553  
15           act factors.

16           And in terms of the defendant's age, I know Ms.  
17           Gelernt has mentioned a number of times that the defendant is  
18           66 years old now.

19           I'll just note Your Honor, that this is not a crime  
20           -- the nature of this crime is not one for which advanced age  
21           incapacitates the defendant from continuing to commit these  
22           types of crimes in the future.

23           The defendant was 52 years old when he first  
24           started sexually abusing Jane Doe two who was an infant at  
25           the time. He was 63 years old when he took Jane Doe one to

1           New Jersey in order to abuse her. That was in 2018. The  
2           defendant's age clearly has not prevented him from committing  
3           crimes, far from it.

4                 If the defendant had not been arrested, he would be  
5           committing the same crimes today and tomorrow and in the  
6           perceivable future. The defendant's advancing age has  
7           clearly not had an impact or has not incapacitated him from  
8           committing the crimes in this case. And so in the  
9           government's view, a sentence of life imprisonment, an  
10           effective life imprisonment is necessary and warranted under  
11           the 3553(a) factors to ensure the safety of the community and  
12           to provide just punishment in this case.

13                 THE COURT: Thank you. Just one more question.  
14                 How old, if you know, is the oldest victim now?

15                 MS. HAJJAR: Right now?

16                 THE COURT: Is anybody -- my question more broadly  
17           is just are any of the victims here even close at this point  
18           to the age of majority?

19                 MS. HAJJAR: No.

20                 THE COURT: Okay. And I ask the question just to -  
21                 -

22                 MS. HAJJAR: I'm sorry. I just want to -- I'm  
23           sorry. Just in response to Your Honor's question, all --  
24           none of the victims are close to the age of majority.

25                 THE COURT: Yeah. The context for my question is

1           the realization, maybe a belated realization on my part, that  
2           in addition to the many other ways, the so many other ways,  
3           that you know, child exploitation is different from  
4           commensury conduct with adults.

5                 One of them is that victims loose the opportunity  
6           that the system tries to accord other victims to participate  
7           in the proceedings in some meaningful way to be heard in  
8           these proceedings, in some meaningful way they're just too  
9           young still to be expected to even fully understand what's  
10           going on here, let alone participate in any meaningful way.

11               And we've seen cases involving adults in this  
12           courthouse in recent years, high profile cases involving  
13           sexual assault, maybe in which you've also been the  
14           prosecutor, I'm not sure.

15               But I just -- you know, as a spectator to those  
16           cases I think it's fair to say that a judge does not need a  
17           PhD in psychology to observe that there's a reason why the  
18           system tries to accord victims the rights that it does, to be  
19           heard in these proceedings because there is some, however  
20           small, some cathartic affect potentially associated with  
21           being able to speak on one's behalf and that's obviously --  
22           that's not present here in the same way.

23               MS. HAJJAR: And I'll just add, Your Honor if I  
24           could, that one thing I didn't mention in my remarks is that  
25           some of this child pornography has also been distributed.

1 Some of the pornography the defendant created.

2 And while maybe the distribution of that  
3 pornography pales in comparison to the act of child rape  
4 which is in terms of the harm to the victim, the knowledge of  
5 the distribution of child pornography, the fact that one's  
6 images and videos of these horrible moments are shared with  
7 other individuals.

8 In at least in my experience having seen victim  
9 impact statements of children who have grown up without  
10 understanding in that realization that there's been a market  
11 made of their -- of images of their exploitation and the harm  
12 and recurring harm that that causes, it is extraordinary and  
13 just cannot be put into words.

14 And so I note that too that it's not simply the  
15 harm looking backwards, but prospective harm as a result of  
16 the distribution of images created of these children's  
17 exploitation and abuse.

18 THE COURT: Yes. Thank you. Ms. Gelernt, I'm  
19 going to, at this point, offer Mr. Lopez of course, the  
20 opportunity to speak on his own behalf. We can do that  
21 either straight away or if you want a five minute break, we  
22 can do that too.

23 MS. GELERT: I believe he has a prepared written  
24 statement that he's written in Spanish and I've provided the  
25 interpreter with a copy so that he can follow along and

1 translate more fluidly.

2 And just to briefly respond to one of the questions  
3 that the court asked of the government about whether a  
4 defendant facing life sentence before the plea and after the  
5 plea would have an incentive to plead, I think the court  
6 phrased the issue perhaps more succinctly and eloquently than  
7 I tried to in my remarks.

8 But I would also add it's not only for the  
9 defendant making the decision. It's defense counsel. So the  
10 effect on defense counsel trying to advise clients in the  
11 future, whether there's any benefit to pleading, is also  
12 implicated by the sentence that the court imposes.

13 THE COURT: Understood. Can we just make sure  
14 before we begin that the microphone is close to hand for Mr.  
15 Lopez and more importantly, actually, the interpreter.

16 MS. GELERTN: Oh, yeah, that's true.

17 THE DEFENDANT: Can you hear me? Your Honor, I  
18 would like to apologize to the government of the United  
19 States and especially to the City of New York for my shameful  
20 acts.

21 I deeply regret the harm, pain and suffering that I  
22 caused to these children and to their families. The  
23 suffering and the hardships that I suffered during my  
24 childhood do not justify the harm that I've caused them with  
25 my horrible acts and I am deeply sorry for having betrayed

1                   the trust that the parents of these poor children put on me.

2                   I am also sorry for the pain and suffering and  
3                   shame that I've caused to my own family. In taking the  
4                   decision to plead guilty and to take responsibility for my  
5                   criminal actions, I hope that I can rid these children and  
6                   their families of the pain and suffering that they would  
7                   suffer during a public trial.

8                   I do understand that there is nothing that I can  
9                   say or do that could repair or erase the pain that I've  
10                  caused, but I hope that my sentence would bring some sense of  
11                  closure to the victims and to their families. With all due  
12                  respect, Your Honor, Orlando Lopez. Thank you.

13                  THE COURT: Thank you. All right. At this point I  
14                  will take a ten or maybe even slightly longer minute break  
15                  and we will reconvene shortly.

16                  (Court in recess from 4:01 p.m. until 4:14 p.m.)

17                  THE COURT: Please be seated. Are we ready to  
18                  proceed?

19                  MS. HAJJAR: Yes, Your Honor.

20                  MS. GELERT: Yes, Your Honor.

21                  THE COURT: Okay. We're back on the record after a  
22                  short break that I've used just to collect my thoughts on the  
23                  arguments from the parties and the statement from the  
24                  defendant.

25                  I've adopted the pre-sentence report in it's

1           entirety. I've reviewed and considered the sentencing  
2           guidelines in this case. I've also considered extensively  
3           the relevant factors set out by the United States Congress at  
4           18 U.S. Code, Section 3553(a), which include the advisory  
5           guidelines range.

6           In order to ensure that I impose a sentence that is  
7           sufficient but not greater than necessary to comply with the  
8           purposes of sentencing, which in this and every case include  
9           the need for the sentence to reflect the seriousness of the  
10          crime, to promote respect for the law, to provide just  
11          punishment for the offense, and to deter criminal conduct by  
12          Mr. Lopez specifically, and also by other individuals who  
13          might seek to engage in this type of crime.

14           I've also, of course, considered the nature and  
15          circumstances of the offense conduct in this case and the  
16          history and characteristics of the defendant.

17           And just to summarize where the various sentencing  
18          data points and recommendations are in this case, the  
19          statutory maximum in the aggregate as the defense has pointed  
20          out is 280 years in jail. That's 30 years for each of the  
21          nine sexual exploitation counts and ten years for the child  
22          pornography conviction.

23           The plea agreement between the parties projected  
24          the guidelines at life imprisonment and the government seeks  
25          a guidelines sentence. The defense has requested a sentence

1       of 300 months or 25 years or such a sentence as the court  
2       might otherwise find appropriate and the United States  
3       Probation Department has recommended a total of 50 years  
4       consecutive incarceration for Mr. Lopez.

5                  As I looked through my notes moments ago, I was  
6       struck that much of what I've written down here is repetitive  
7       of arguments the government has made and in many cases  
8       repetitive of acknowledgments the defense has made about the  
9       severity of the criminal conduct at issue here. But I think  
10      it's worth, given the extraordinary nature of this course of  
11      conduct, acknowledgment by me nevertheless.

12                 And I start with some quantitative observations as  
13       the government did. I observed that the number of children  
14       involved in this case is high, exceptionally high. Not just  
15       the victims referenced by name or pseudonym in the  
16       indictment, but also as indicated by the pre-sentence report  
17       at paragraph 23, it is the case that forensic analysis of the  
18       defendant's devices showed that he produced, if I understand  
19       this correctly, child pornography depicting at least 28  
20       victims, only 15 of whom have been identified.

21                 MS. HAJJAR: That's correct, Your Honor.

22                 THE COURT: So that prompts for me the  
23       extraordinary realization that there may be a large number of  
24       children out there who were abused by Mr. Lopez, and as to  
25       whom no adult in the world other than Mr. Lopez himself, is

1       aware of the abuse, so that any opportunity that an adult  
2       might have to deal with the victimization of those children  
3       as best they could through therapy or otherwise, we simply  
4       don't know who knows what and to what degree those children  
5       have any adult in their life with whom they're in  
6       conversation about this conduct.

7                  The pre-sentence report notes as to the additional  
8       victims that they cannot be grouped under the sentencing  
9       guidelines or considered relevant conduct and, therefore, to  
10      the extent we're talking about the guidelines, which we're  
11      really not here given the life range, that would be a basis  
12      for an upward departure under the guidelines if anything.

13                  The number of images in this case is extraordinary.  
14      There were 13,000 files recovered from the defendant's  
15      premises that the government believes were produced by the  
16      defendant and that's separate and apart from other images he  
17      downloaded, what the pre-sentence report is calling the  
18      commercial images.

19                  Do I have that number correct?

20                  MS. HAJJAR: That's correct, Your Honor.

21                  THE COURT: That's an extraordinary number of  
22      files, it should go without saying. More importantly than  
23      the numbers is, of course, the content of the images.

24                  And the content of the images has been described at  
25      some length in the pre-sentence report and in the

1 government's submission and somewhat more obliquely here  
2 today on the record.

3 I don't want to go into too much detail here in  
4 court, but given that we're making a record for posterity  
5 here, including perhaps a record that will be read by victims  
6 themselves one day, I think it's important for the record to  
7 reflect that all of us here in this courtroom today were  
8 aware, especially the advocates and the decision maker in  
9 this courtroom here today, were aware of the extent and  
10 severity of the sexual exploitation activity at issue here  
11 today.

12 Suffice it to say in that respect that we are  
13 talking about extraordinarily graphic depictions of Mr. Lopez  
14 performing sexual acts on children and forcing them to do so  
15 on him.

16 And so that we are crystal clear about that, we are  
17 talking, as the government acknowledged, about the outright  
18 rape of children among other things.

19 In some cases the victims were forced by Mr. Lopez  
20 to perform these acts not only with him, but with other  
21 children including at times siblings.

22 I'll stop there, but the narrative recitation of  
23 what we're dealing with in these images, there are not really  
24 words to describe other to invoke trite phrases like it  
25 shocks the conscience. It genuinely does shock the

1 conscience.

2 And then there's the duration of the scheme. The  
3 earliest victims identified in this case date back to 2011.

4 I don't think anybody sitting in this room other than Mr.  
5 Lopez knows with confidence whether and how much earlier the  
6 type of conduct we are talking about here predates the  
7 conduct described in the indictment.

8 I've only been a judge in this courthouse for two  
9 years now and in that -- even in that short period of time,  
10 I've seen a lot of the darker side of humanity as we do in  
11 federal courts, but this case is in a category of its own.  
12 The suffering and the corresponding loss of innocence to  
13 these child victims are incalculable.

14 There is no way that I can articulate that better  
15 than the victim statements do. They speak to the depression  
16 that these child victims are living with, the fear, the loss  
17 of self-esteem, the inability to enjoy everyday life, the  
18 obstacles to physical and emotional intimacy with which these  
19 victims will have to struggle forever. The nightmares, the  
20 body image issues.

21 One victim was said by her guardian to be disgusted  
22 by her own body and I think we can all acknowledge that she  
23 is describing a particularly excruciating kind of torture  
24 that in all likelihood will endure for that victim long after  
25 Mr. Lopez is gone from this earth.

1                   The guilt that one victim described that if she had  
2 spoken up sooner, other victims might not have been harmed.  
3                   And ultimately the suicidal ideation and just imagine that  
4 for a second. That we're talking here about conduct that  
5 caused a child so much suffering that she would prefer to be  
6 dead than alive.

7                   There are secondary consequences to others beyond  
8 the immediate victims as the government also pointed out.  
9 Obviously most notably, the parents. They have to struggle  
10 with their own guilt for things so ordinary as leaving a  
11 child to go to work. And more than one parent described on-  
12 going problems of their own in getting and maintaining work  
13 given what they feel to be the persistent need to be near  
14 their children every day now.

15                  So that's the aggravating factors. As in every  
16 case, every criminal case in every courthouse anywhere in the  
17 world there are factors to be weighed on the other side of  
18 the scale. And defense counsel has articulated them.

19                  It is true that Mr. Lopez accepted responsibility  
20 relatively early on in these proceedings and that he did  
21 spare the victims the burden of sitting through a trial or  
22 otherwise getting engaged.

23                  The record doesn't really reveal much, it seems to  
24 me, in the way of alternative paths given the video and  
25 documentary evidence. It's not really obvious that Mr. Lopez

1       had much of an alternative but to plead guilty, but still the  
2       decision to spare the victims a trial does count for  
3       something.

4              Perhaps more importantly, and I know defense  
5       counsel didn't want to get into this at long length, but I do  
6       want to note that Mr. Lopez recounts in the defense  
7       submission being the victim of sexual abuse himself as a  
8       child at the hands of a man that the defense has identified  
9       as a friend of the defendant's father.

10             Mr. Lopez also recounts being physically abused by  
11       his father when he spoke up about this incident. And I do  
12       not -- I want to make clear, I do not discount the potential  
13       horror of that or the precipitating role that it may -- may  
14       have played in the broader conduct at issue here.

15             But it simply does not in any way for the most  
16       obvious reasons excuse the conduct at issue here. And given  
17       the aggravating factors that I've described, it is hard to  
18       see what substantial role, if any, that history can play at  
19       sentencing in light of the 3553(a) factors that I've  
20       described.

21             At this point in his life, simply put, Mr. Lopez  
22       has revealed himself through his conduct, to be the person  
23       who he is and the record reveals absolutely no indication  
24       that he sought help for the, you know, what the defense has  
25       described as the mental health overlay in this case.

1                   But putting all that aside, the need for deterrents  
2                   in this case, both specific deterrents and general  
3                   deterrents, compel me -- compel me, I believe, to ensure that  
4                   Mr. Lopez will serve what will effectively be in the  
5                   aggregate a life sentence regardless of how long he lives.

6                   I am sensitive to the designation issues raised by  
7                   the defense. I asked the follow up question that I did about  
8                   where the dividing line might be between a sentence that  
9                   would render him eligible perhaps for a step down in security  
10                  designation and the sentences that would not.

11                  But I conclude having heard what we've heard about  
12                  that, that the conduct in this case simply places us too far  
13                  from that borderline, whatever it might be, to merit taking  
14                  that into account in a dispositive way in this case.

15                  And so having said all that and after assessing the  
16                  particular facts of this case and in light of the relevant  
17                  Section 3553(a) factors, I sentence Mr. Lopez to the  
18                  following: 25 years in the custody of the attorney general  
19                  on each of counts 2, 4, 5 and 6, to run concurrently to one  
20                  another and 25 years on each of counts 7, 8, 9, 10, and 11,  
21                  that later group of counts to run concurrently to one  
22                  another, but consecutively to counts 2, 4, 5 and 6, the first  
23                  grouping of counts.

24                  And I also sentence Mr. Lopez to five years on  
25                  count 12, the child pornography count to run consecutively to

1 all of the other counts in this case.

2 I agree with the government that that creation and  
3 distribution of the child pornography images of the victims  
4 here is a separate harm and one that will continue to impact  
5 the lives of the victims here long after the sexual abuse in  
6 this case is, you know, the dates of the sexual abuse are in  
7 the past.

8 So by my calculation when you look at what -- which  
9 terms of imprisonment that I just mentioned on which counts  
10 run consecutively to which others, you end up with a total of  
11 55 years of incarceration.

12 Does the government have any questions about the  
13 calculations that I've just made?

14 MS. HAJJAR: No, Your Honor.

15 THE COURT: Does the Probation Department?

16 THE PROBATION DEPARTMENT: No, Thank you, Your  
17 Honor.

18 THE COURT: Does the defense have any mechanical  
19 calculations just about how that works?

20 MS. GELERTN: I don't have mechanical calculations  
21 about how that works, Judge.

22 The only thing that I would add is that because of  
23 the nature of Mr. Lopez's custody on this case, and with the  
24 sentence of 55 years, this is really not the most paramount  
25 issue, but I would ask that the judgment indicate that it

1 began running from October 30th of 2019, so that he's  
2 credited for all of the time he's actually served in on this  
3 case.

4 THE COURT: I would have anticipated that that  
5 would happen automatically, but --

6 MS. GELERTN: There are issues regarding who has  
7 primary jurisdiction --

8 THE COURT: Oh, state versus -- okay.

9 MS. GELERTN: -- state jurisdiction, so I would  
10 just ask that that date be reflected in the judgment.

11 THE COURT: Does the government have any objection  
12 to that?

13 MS. HAJJAR: No, the government takes no view on  
14 that.

15 THE COURT: Okay. So I'm sorry, say the date  
16 again?

17 MS. HAJJAR: It's October 30th of 2019.

18 THE COURT: And that's the first day of state  
19 custody in this case?

20 MS. HAJJAR: Yes, Your Honor.

21 THE COURT: Okay. The judgment will so indicate.  
22 In terms of supervised release, I sentence Mr. Lopez to five  
23 years of supervised release on each count all to run  
24 concurrently to one another. He shall be subject to all  
25 mandatory conditions of supervised release and too, the

1           following special conditions suggested by the probation  
2           department. Just bear with me one second.

3                 So pursuant to 18 U.S. Code, Section 4042(c), as in  
4                 Charlie, Mr. Lopez shall be subject to the sex offender  
5                 registration provisions in the United States Code.

6                 He shall register and keep the registration current  
7                 in each jurisdiction where he resides, where he's employed,  
8                 or where he may be a student.

9                 And for initial registration purposes only, he  
10                 shall register in the jurisdiction in which he is convicted  
11                 if that jurisdiction is different from the jurisdiction of  
12                 his residence. I don't believe that to be the case. Hold on  
13                 just one second.

14                 MS. GELERTN: That is not the case, Your Honor.

15                 THE COURT: Yeah. The defendant shall refrain from  
16                 contacting the victims of the offenses here. This means he  
17                 shall not attempt to meet in person, communicate by letter,  
18                 telephone, email, the internet, directly or indirectly,  
19                 including through any third party, without the advance  
20                 knowledge and written permission of the United States  
21                 Probation Department. No contact with the victims.

22                 The defendant shall participate in mental health  
23                 treatment programming, which may include participation in a  
24                 treatment program for sexual disorders, as approved by the  
25                 Probation Department. Defendant shall contribute to the cost

1           of such services rendered and/or any psychotropic medications  
2           prescribed to the degree that he is able and shall cooperate  
3           in securing any applicable third party payment.

4                 The defendant shall disclose all financial  
5           information and documents to the Probation Department to  
6           assess his ability to pay and as part of the treatment  
7           program for sexual disorders, the defendant shall participate  
8           in polygraph examinations and/or visual response testing to  
9           obtain information necessary for risk management and  
10           correctional treatment.

11                 The defendant shall not associate with children  
12           under the age of 18 unless a responsible adult is present and  
13           the defendant has prior written approval from the probation  
14           department.

15                 Prior approval does not apply to contacts which are  
16           not known in advance by the defendant where children are  
17           accompanied by a parent or guardian or for incidental contact  
18           in a public setting.

19                 Any such non-pre-approved contact with children  
20           must be reported to the Probation Department as soon as  
21           practicable but no later than -- excuse me, than 12 hours  
22           following such conduct -- such contact.

23                 Upon commencing supervision, defendant shall  
24           provide to the Probation Department the identity and contact  
25           information regarding any family members or friends with

1 children under the age of 18 whom the defendant expects to  
2 have routine contact with so that the parents or guardians of  
3 these children may be contacted and the Probation Department  
4 can approve routine family and social interactions such as  
5 holidays and other family gatherings where such children are  
6 present and supervised by parents or guardians without  
7 individual approval of each such event.

8                 If the defendant co-habitates with an individual  
9 with who has minor children, the defendant shall inform that  
10 other party of his prior criminal history concerning the sex  
11 offenses of which he has been convicted.

12                 Moreover, he will notify that party of his  
13 prohibition on associating with any children under the age of  
14 18 unless a responsible adult is present.

15                 The defendant shall submit his person, property,  
16 house, residence, vehicle, papers, and computers, as defined  
17 in 18 U.S. Code, Section 1030(e)(1), other electronic  
18 communications or data storage devices or media, or office,  
19 to a search conducted by a United States Probation Officer.  
20 Failure to submit to a search may be grounds for revocation  
21 of release.

22                 The defendant shall warn any other occupants that  
23 the premises may be subject to searches pursuant to this  
24 condition. An officer may conduct the search pursuant to  
25 this condition only when reasonable suspicion exists that the

1 defendant has violated a condition of his supervision and  
2 that the areas to be searched contain evidence of that  
3 violation. Any such search must be conducted at a reasonable  
4 time at in a reasonable manner.

5 As the next special condition, the defendant shall  
6 cooperate with and abide by all instructions of immigration  
7 authorities and if deported or excluded, the defendant may  
8 not re-enter the United States illegally.

9 Does that cover the special conditions recommended  
10 by the Probation Department?

11 THE PROBATION DEPARTMENT: It does, Your Honor.  
12 Thank you.

13 THE COURT: Okay. Does the government have any  
14 other requests in respect of special conditions?

15 MS. HAJJAR: No, thank you, Your Honor.

16 THE COURT: Okay. I do in addition to the special  
17 conditions I've just indicated as conditions of supervised  
18 release, order forfeiture in this case. I think I've already  
19 executed a preliminary order of forfeiture?

20 MS. HAJJAR: That's correct, Your Honor. I have a  
21 copy if you just want to pronounce it as final.

22 THE COURT: Is there any objection from the  
23 defense?

24 MS. GELERT: There's no objection, Your Honor.

25 THE COURT: Okay. Then I do now pronounce that

1                   preliminary order of forfeiture to be final.

2                   I will not impose a fine in this case because I  
3                   find based on the pre-sentence report, that Mr. Lopez lacks  
4                   the ability to pay a fine.

5                   But I will impose restitution today in the amount  
6                   of \$24,000 total. And is there -- well, let me pronounce  
7                   this on the record so that the record is complete.

8                   That restitution shall consist of \$3,000 each to  
9                   the victims who have been identified by the pseudonyms Erin  
10                  and Fiona, who are depicted in the series Blues Pink 1,  
11                  \$3,000 to Jane of the series Cinderblock Blue, \$3,000 to  
12                  Jenny of the series identified as Jenny, \$3,000 to Jessica  
13                  from the series identified as Jessica, \$3,000 to the victim  
14                  identified by the pseudonym Amy who is depicted in the series  
15                  identified as Misty, and \$3,000 to Raven, who is depicted in  
16                  the series Teal&Pinkprincess2, and \$3,000 for Tara who is  
17                  depicted in the series identified as Tara.

18                  I will also, to the extent any other victims  
19                  deserving a restitution are identified, hear from the  
20                  government on the subject of restitution for 90 days from the  
21                  date, I believe, on which the judgment formally issues.

22                  And I think the defense has indicated in the plea  
23                  agreement and again here today, that you consent to the order  
24                  of that restitution. Is that correct?

25                  MS. GELERTN: Yes, Your Honor.

1                   THE COURT: Okay. I am obligated by law to impose  
2 a special assessment of \$100 for each count of conviction and  
3 I do so now.

4                   I find that the sentence that I have just imposed  
5 is sufficient, but not greater than necessary to comply with  
6 the purposes of sentencing that we have discussed here today.

7                   Does the government have a motion with respect to  
8 any counts that you seek to dismiss?

9                   MS. HAJJAR: Yes, Your Honor. The government now  
10 moves to dismiss any open counts in the indictment.

11                  THE COURT: Okay. I think that's count 1 and count  
12 3 of the indictment and that motion is granted.

13                  Mr. Lopez, let me advise you of your right to  
14 appeal. You can appeal your conviction if you believe that  
15 your guilty plea was somehow unlawful or involuntary or if  
16 there is some other fundamental defect in the proceedings  
17 that was not waived by your guilty plea.

18                  And under some circumstances a defendant also has  
19 the right to appeal his sentence. Any notice of appeal must  
20 be filed within 14 days of the entry of judgment in this case  
21 or within 14 days of the filing of a notice of appeal by the  
22 government, whichever comes later.

23                  If you request, the clerk of the court will prepare  
24 and file a notice of appeal on your behalf and if you cannot  
25 afford to pay the cost of an appeal, or for appellate

1       counsel, you have the right to apply for leave to appeal *in  
2 forma pauperis*, which is a status pursuant to which the court  
3       would waive the filing fee and on appeal, you would  
4       potentially be eligible for court appointed counsel.

5                  In terms of sealing, I think we discussed, but let  
6       me just make clear on the record here, that I do order Court  
7       Exhibit 1 sealed and covered by the sealing order that is  
8       already in effect in this case subject to the discussion  
9       we've had on the record today about the circumstances in  
10      which the defense may share it with state -- with Mr. Lopez's  
11      state court defense counsel.

12                  Finally, I respectfully direct the court reporter  
13      to produce a transcript of today's proceeding.

14                  Ms. Hajjar, are there any other matters to resolve  
15      in this case?

16                  MS. HAJJAR: I don't believe so except that Officer  
17      Fisher just wanted the record to be clear and I agree with  
18      her that it's prudent to do so that the \$24,000 in  
19      restitution that the court has imposed is specifically in  
20      connection with count 12, which is the possession of child  
21      pornography count and should the clerk's office have any  
22      issues in terms of executing any monies that come in through  
23      that, of course we have those addresses and will be able to  
24      provide them to the clerk's office.

25                  THE COURT: Yes, thank you for the clarification.

1           That restitution, the \$24,000 in restitution is indeed  
2           ordered in connection with count 12, the child pornography  
3           count. And yes, the clerk's office will have access if  
4           needed to Court's Exhibit 1, though it remains under seal and  
5           also of course can be in communication with the government as  
6           necessary.

7           MS. HAJJAR: Thank you, Your Honor.

8           THE COURT: Ms. Gelernt, anything else?

9           MS. GELERTN: Your Honor, the only additional  
10          matter is that we'd ask that the court recommend that Mr.  
11          Lopez be designated to a facility as close to the New York  
12          area as possible to facilitate family visitation.

13           And I would just state for the record that my  
14          office will, should Mr. Lopez choose to file a notice of  
15          appeal, it's our practice to file the notice on his behalf.

16           THE COURT: Okay. And yes, I do recommend to the  
17          Bureau of Prisons that Mr. Lopez be designated to a facility  
18          as close to New York City as possible. That recommendation  
19          is not binding on them (coughing) -- excuse me, but I'd make  
20          it for what it's worth.

21           All right. That concludes today's proceedings.  
22          Hold on just one second.

23           So it's being helpfully pointed out to me that I  
24          should set a schedule for the payment of restitution and that  
25          the schedule shall be that Mr. Lopez is to pay \$25 per

1 quarter while he's incarcerated and employed or half of his  
2 prison earnings, whichever number is greater, during the  
3 period of his incarceration.

4 All right. With that we've concluded today's  
5 proceedings. We're adjourned.

6 (Proceeding concluded at 4:49 p.m.)

7 I, CHRISTINE FIORE, court-approved transcriber  
8 and certified electronic reporter and transcriber, certify  
9 that the foregoing is a correct transcript from the official  
10 electronic sound recording of the proceedings in the above-  
11 entitled matter.

12  
13 

14 \_\_\_\_\_ May 7, 2022

15 Christine Fiore, CERT-410

16 Transcriber

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